

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 227, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO CRIMES AND PUNISHMENTS AND MOTOR VEHICLES; AMENDING SECTION 18-8002, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REQUIREMENT THAT CERTAIN PERSONS BE INFORMED OF CERTAIN INFORMATION; AMENDING SECTION 18-8002A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE REQUIREMENT THAT CERTAIN PERSONS BE INFORMED OF CERTAIN INFORMATION; AMENDING SECTION 18-8004C, IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONS ENROLLED AND IN GOOD STANDING IN CERTAIN COURTS SHALL BE ELIGIBLE FOR RESTRICTED NONCOMMERCIAL DRIVING PRIVILEGES FOR CERTAIN PURPOSES AND UNDER CERTAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-8005, IDAHO CODE, TO PROVIDE THAT CERTAIN PERSONS ENROLLED AND IN GOOD STANDING IN CERTAIN COURTS SHALL BE ELIGIBLE FOR RESTRICTED NONCOMMERCIAL DRIVING PRIVILEGES FOR CERTAIN PURPOSES AND UNDER CERTAIN CONDITIONS; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- PENALTY AND SUSPENSION UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete, evidentiary testing:

(a) He is subject to a civil penalty of two hundred fifty dollars (\$250) for refusing to take the test;

(b) His driver's license will be seized by the peace officer and a temporary permit will be issued; provided however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations, and in no instance shall a tem-

porary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;

(c) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing;

(d) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty and his driver's license will be suspended absolutely for one (1) year if this is his first refusal and two (2) years if this is his second refusal within ten (10) years;

(e) ~~Provided however, if he is enrolled in and is a participant in good standing in admitted to a drug problem solving court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code program and has served at least forty-five (45) days of an absolute suspension of driving privileges, then he shall~~ may be eligible for a restricted ~~noncommercial driving privileges permit~~ for the purpose of getting to and from work, school or an alcohol treatment program, ~~which may be granted by the presiding judge of the drug court, provided that he has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by him and that he has shown proof of financial responsibility; and~~

(f) After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) If the motorist refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) above:

(a) He shall be fined a civil penalty of two hundred fifty dollars (\$250) and his driver's license or permit shall be seized by the peace officer and forwarded to the court and a temporary permit shall be issued by the peace officer which allows him to operate a motor vehicle until the date of his hearing, if a hearing is requested, but in no event for more than thirty (30) days; provided however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test;

(b) A written request may be made within seven (7) calendar days for a hearing before the court; if requested, the hearing must be held within thirty (30) days of the seizure unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The court, in granting such an extension, may, for good cause shown, extend the defendant's temporary driving privileges for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to, or complete, evidentiary testing, and the burden of proof shall be upon the defendant; the court shall sustain a two hundred fifty dollar (\$250) civil penalty immediately and suspend all the defendant's driving privileges immediately for one (1) year for a first refusal and two (2) years for a second

1 refusal within ten (10) years unless it finds that the peace officer did  
2 not have legal cause to stop and request him to take the test or that the  
3 request violated his civil rights;

4 (c) If a hearing is not requested by written notice to the court con-  
5 cerned within seven (7) calendar days, upon receipt of a sworn statement  
6 by the peace officer of the circumstances of the refusal, the court  
7 shall sustain a two hundred fifty dollar (\$250) civil penalty and sus-  
8 pend the defendant's driving privileges for one (1) year for a first  
9 refusal and two (2) years for a second refusal within ten (10) years,  
10 during which time he shall have absolutely no driving privileges of any  
11 kind;

12 (d) Notwithstanding the provisions of subsection (4) (b) and (c) of this  
13 section, if the defendant is enrolled in and is a participant in good  
14 standing in a drug court or mental health court approved by the supreme  
15 court drug court and mental health court coordinating committee under  
16 the provisions of chapter 56, title 19, Idaho Code, or other similar  
17 problem solving court utilizing community-based sentencing alterna-  
18 tives, then the defendant shall be eligible for restricted noncommer-  
19 cial driving privileges for the purpose of getting to and from work,  
20 school or an alcohol treatment program, which may be granted by the pre-  
21 siding judge of the drug court or mental health court or other similar  
22 problem solving court, provided that the defendant has served a period  
23 of absolute suspension of driving privileges of at least forty-five  
24 (45) days, that an ignition interlock device is installed on each of the  
25 motor vehicles owned or operated, or both, by the defendant and that the  
26 defendant has shown proof of financial responsibility as defined and  
27 in the amounts specified in section 49-117, Idaho Code, provided that  
28 the restricted noncommercial driving privileges may be continued if the  
29 defendant successfully completes the drug court, mental health court or  
30 other similar problem solving court, and that the court may revoke such  
31 privileges for failure to comply with the terms of probation or with the  
32 terms and conditions of the drug court, mental health court or other  
33 similar problem solving court program; and

34 (e) After submitting to evidentiary testing at the request of the peace  
35 officer, he may, when practicable, at his own expense, have additional  
36 tests made by a person of his own choosing. The failure or inability to  
37 obtain an additional test or tests by a person shall not preclude the ad-  
38 mission of results of evidentiary testing for alcohol concentration or  
39 for the presence of drugs or other intoxicating substances taken at the  
40 direction of the peace officer unless the additional test was denied by  
41 the peace officer.

42 (5) Any sustained civil penalty or suspension of driving privileges un-  
43 der this section or section 18-8002A, Idaho Code, shall be a civil penalty  
44 separate and apart from any other suspension imposed for a violation of other  
45 Idaho motor vehicle codes or for a conviction of an offense pursuant to this  
46 chapter, and may be appealed to the district court.

47 (6) No hospital, hospital officer, agent, or employee, or health care  
48 professional licensed by the state of Idaho, whether or not such person has  
49 privileges to practice in the hospital in which a body fluid sample is ob-  
50 tained or an evidentiary test is made, shall incur any civil or criminal li-

1 ability for any act arising out of administering an evidentiary test for al-  
2cohol concentration or for the presence of drugs or other intoxicating sub-  
3stances at the request or order of a peace officer in the manner described in  
4this section and section 18-8002A, Idaho Code; provided that nothing in this  
5section shall relieve any such person or legal entity from civil liability  
6arising from the failure to exercise the community standard of care.

7 (a) This immunity extends to any person who assists any individual to  
8withdraw a blood sample for evidentiary testing at the request or order  
9of a peace officer, which individual is authorized to withdraw a blood  
10sample under the provisions of section 18-8003, Idaho Code, regardless  
11of the location where the blood sample is actually withdrawn.

12 (b) A peace officer is empowered to order an individual authorized in  
13section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary  
14testing when the peace officer has probable cause to believe that the  
15suspect has committed any of the following offenses:

16 (i) Aggravated driving under the influence of alcohol, drugs or  
17other intoxicating substances as provided in section 18-8006,  
18Idaho Code;

19 (ii) Vehicular manslaughter as provided in subsection (3) (a), (b)  
20and (c) of section 18-4006, Idaho Code;

21 (iii) Aggravated operating of a vessel on the waters of the state  
22while under the influence of alcohol, drugs or other intoxicating  
23substances as provided in section 67-7035, Idaho Code; or

24 (iv) Any criminal homicide involving a vessel on the waters of the  
25state while under the influence of alcohol, drugs or other intoxi-  
26cating substances.

27 (c) Nothing herein shall limit the discretion of the hospital admin-  
28istration to designate the qualified hospital employee responsible to  
29withdraw the blood sample.

30 (d) The law enforcement agency that requests or orders withdrawal of  
31the blood sample shall pay the reasonable costs to withdraw such blood  
32sample, perform laboratory analysis, preserve evidentiary test re-  
33sults, and testify in judicial proceedings. The court may order resti-  
34tution pursuant to the provisions of section 18-8003(2), Idaho Code.

35 (e) The withdrawal of the blood sample may be delayed or terminated if:

36 (i) In the reasonable judgment of the hospital personnel with-  
37drawal of the blood sample may result in serious bodily injury to  
38hospital personnel or other patients; or

39 (ii) The licensed health care professional treating the suspect  
40believes the withdrawal of the blood sample is contraindicated be-  
41cause of the medical condition of the suspect or other patients.

42 (7) "Actual physical control" as used in this section and section  
4318-8002A, Idaho Code, shall be defined as being in the driver's position of  
44the motor vehicle with the motor running or with the motor vehicle moving.

45 (8) Any written notice required by this section shall be effective upon  
46mailing.

47 (9) For the purposes of this section and section 18-8002A, Idaho Code,  
48"evidentiary testing" shall mean a procedure or test or series of proce-  
49dures or tests, including the additional test authorized in subsection (10)

1 of this section, utilized to determine the concentration of alcohol or the  
2 presence of drugs or other intoxicating substances in a person.

3 (10) A person who submits to a breath test for alcohol concentration,  
4 as defined in subsection (4) of section 18-8004, Idaho Code, may also be re-  
5 quested to submit to a second evidentiary test of blood or urine for the pur-  
6 pose of determining the presence of drugs or other intoxicating substances  
7 if the peace officer has reasonable cause to believe that a person was driv-  
8 ing under the influence of any drug or intoxicating substance or the combined  
9 influence of alcohol and any drug or intoxicating substance. The peace of-  
10 ficer shall state in his or her report the facts upon which that belief is  
11 based.

12 (11) Notwithstanding any other provision of law to the contrary, the  
13 civil penalty imposed under the provisions of this section must be paid, as  
14 ordered by the court, to the county justice fund or the county current ex-  
15 pense fund where the incident occurred. If a person does not pay the civil  
16 penalty imposed as provided in this section within thirty (30) days of the  
17 imposition, unless this period has been extended by the court for good cause  
18 shown, the prosecuting attorney representing the political subdivision  
19 where the incident occurred may petition the court in the jurisdiction where  
20 the incident occurred to file the order imposing the civil penalty as an or-  
21 der of the court. Once entered, the order may be enforced in the same manner  
22 as a final judgment of the court. In addition to the civil penalty, attor-  
23 ney's fees, costs and interest may be assessed against any person who fails  
24 to pay the civil penalty.

25 SECTION 2. That Section 18-8002A, Idaho Code, be, and the same is hereby  
26 amended to read as follows:

27 18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF  
28 DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF  
29 TESTS. (1) Definitions. As used in this section:

30 (a) "Actual physical control" means being in the driver's position of a  
31 motor vehicle with the motor running or with the vehicle moving.

32 (b) "Administrative hearing" means a hearing conducted by a hearing  
33 officer to determine whether a suspension imposed by the provisions of  
34 this section should be vacated or sustained.

35 (c) "Department" means the Idaho transportation department and, as the  
36 context requires, shall be construed to include any agent of the depart-  
37 ment designated by rule as hereinafter provided.

38 (d) "Director" means the director of the Idaho transportation depart-  
39 ment.

40 (e) "Evidentiary testing" means a procedure or test or series of proce-  
41 dures or tests utilized to determine the concentration of alcohol or the  
42 presence of drugs or other intoxicating substances in a person, includ-  
43 ing additional testing authorized by subsection (6) of this section. An  
44 evidentiary test for alcohol concentration shall be based on a formula  
45 of grams of alcohol per one hundred (100) cubic centimeters of blood,  
46 per two hundred ten (210) liters of breath, or sixty-seven (67) millili-  
47 ters of urine. Analysis of blood, breath or urine for the purpose of de-  
48 termining alcohol concentration shall be performed by a laboratory op-  
49 erated by the Idaho state police or by a laboratory approved by the Idaho

1 state police under the provisions of approval and certification stan-  
 2 dards to be set by the Idaho state police, or by any other method ap-  
 3 proved by the Idaho state police. Notwithstanding any other provision  
 4 of law or rule of court, the results of any test for alcohol concentra-  
 5 tion and records relating to calibration, approval, certification or  
 6 quality control performed by a laboratory operated and approved by the  
 7 Idaho state police or by any other method approved by the Idaho state po-  
 8 lice shall be admissible in any proceeding in this state without the ne-  
 9 cessity of producing a witness to establish the reliability of the test-  
 10 ing procedure for examination.

11 (f) "Hearing officer" means a person designated by the department to  
 12 conduct administrative hearings. The hearing officer shall have au-  
 13 thority to administer oaths, examine witnesses and take testimony,  
 14 receive relevant evidence, issue subpoenas, regulate the course and  
 15 conduct of the hearing and make a final ruling on the issues before him.

16 (g) "Hearing request" means a request for an administrative hearing on  
 17 the suspension imposed by the provisions of this section.

18 (2) Information to be given. At the time of evidentiary testing for  
 19 concentration of alcohol, or for the presence of drugs or other intoxicat-  
 20 ing substances is requested, the person shall be informed that if the person  
 21 refuses to submit to or fails to complete evidentiary testing, or if the per-  
 22 son submits to and completes evidentiary testing and the test results indi-  
 23 cate an alcohol concentration or the presence of drugs or other intoxicating  
 24 substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code,  
 25 the person shall be informed substantially as follows (but need not be in-  
 26 formed verbatim):

27 If you refuse to submit to or if you fail to complete and pass eviden-  
 28 tiary testing for alcohol or other intoxicating substances:

29 (a) The peace officer will seize your driver's license and issue a no-  
 30 tice of suspension and a temporary driving permit to you, but no peace  
 31 officer will issue you a temporary driving permit if your driver's li-  
 32 cense or permit has already been and is suspended or revoked. No peace  
 33 officer shall issue a temporary driving permit to a driver of a commer-  
 34 cial vehicle who refuses to submit to or fails to complete and pass an  
 35 evidentiary test;

36 (b) You have the right to request a hearing within seven (7) days of the  
 37 notice of suspension of your driver's license to show cause why you re-  
 38 fused to submit to or to complete and pass evidentiary testing and why  
 39 your driver's license should not be suspended;

40 (c) If you refused or failed to complete evidentiary testing and do not  
 41 request a hearing before the court or do not prevail at the hearing, your  
 42 driver's license will be suspended. The suspension will be for one (1)  
 43 year if this is your first refusal. The suspension will be for two (2)  
 44 years if this is your second refusal within ten (10) years. You will not  
 45 be able to obtain a temporary restricted license during that period;

46 (d) If you complete evidentiary testing and fail the testing and do not  
 47 request a hearing before the department or do not prevail at the hear-  
 48 ing, your driver's license will be suspended. This suspension will be  
 49 for ninety (90) days if this is your first failure of evidentiary test-  
 50 ing, but you may request restricted noncommercial vehicle driving priv-

1 illeges after the first thirty (30) days. The suspension will be for one  
 2 (1) year if this is your second failure of evidentiary testing within  
 3 five (5) years. You will not be able to obtain a temporary restricted  
 4 license during that period;

5 (e) ~~However, if you become enrolled in and are a participant in good~~  
 6 ~~standing in~~ are admitted to a drug problem solving court approved by the  
 7 ~~supreme court drug court and mental health court coordinating commit-~~  
 8 ~~tee under the provisions of chapter 56, title 19, Idaho Code program~~  
 9 ~~and have served at least forty-five (45) days of an absolute suspen-~~  
 10 ~~sion of driving privileges, you shall~~ may be eligible for a restricted  
 11 ~~noncommercial driving privileges permit~~ for the purpose of getting  
 12 to and from work, school or an alcohol treatment program, ~~which may be~~  
 13 ~~granted by the presiding judge of the drug court, provided that you have~~  
 14 ~~served a period of absolute suspension of driving privileges of at least~~  
 15 ~~forty-five (45) days, that an ignition interlock device is installed on~~  
 16 ~~each of the motor vehicles owned or operated, or both, by you and that~~  
 17 ~~you have shown proof of financial responsibility; and~~

18 (f) After submitting to evidentiary testing you may, when practicable,  
 19 at your own expense, have additional tests made by a person of your own  
 20 choosing.

21 (3) Rulemaking authority of the Idaho state police. The Idaho state po-  
 22 lice may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

23 (a) What testing is required to complete evidentiary testing under this  
 24 section; and

25 (b) What calibration or checking of testing equipment must be performed  
 26 to comply with the department's requirements. Any rules of the Idaho  
 27 state police shall be in accordance with the following: a test for alco-  
 28 hol concentration in breath as defined in section 18-8004, Idaho Code,  
 29 and subsection (1) (e) of this section will be valid for the purposes of  
 30 this section if the breath alcohol testing instrument was approved for  
 31 testing by the Idaho state police in accordance with section 18-8004,  
 32 Idaho Code, at any time within ninety (90) days before the evidentiary  
 33 testing. A test for alcohol concentration in blood or urine as defined  
 34 in section 18-8004, Idaho Code, that is reported by the Idaho state po-  
 35 lice or by any laboratory approved by the Idaho state police to perform  
 36 this test will be valid for the purposes of this section.

37 (4) Suspension.

38 (a) Upon receipt of the sworn statement of a peace officer that there  
 39 existed legal cause to believe a person had been driving or was in actual  
 40 physical control of a motor vehicle while under the influence of alco-  
 41 hol, drugs or other intoxicating substances and that the person submit-  
 42 ted to a test and the test results indicated an alcohol concentration or  
 43 the presence of drugs or other intoxicating substances in violation of  
 44 section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall  
 45 suspend the person's driver's license, driver's permit, driving privi-  
 46 leges or nonresident driving privileges:

47 (i) For a period of ninety (90) days for a first failure of ev-  
 48 identiary testing under the provisions of this section. The  
 49 first thirty (30) days of the suspension shall be absolute and the  
 50 person shall have absolutely no driving privileges of any kind.

1           Restricted noncommercial vehicle driving privileges applicable  
 2           during the remaining sixty (60) days of the suspension may be re-  
 3           quested as provided in subsection (9) of this section.

4           (ii) For a period of one (1) year for a second and any subsequent  
 5           failure of evidentiary testing under the provisions of this sec-  
 6           tion within the immediately preceding five (5) years. No driving  
 7           privileges of any kind shall be granted during the suspension im-  
 8           posed pursuant to this subsection.

9           The person may request an administrative hearing on the suspension as  
 10          provided in subsection (7) of this section. Any right to contest the  
 11          suspension shall be waived if a hearing is not requested as therein pro-  
 12          vided.

13          (b) The suspension shall become effective thirty (30) days after ser-  
 14          vice upon the person of the notice of suspension. The notice shall be in  
 15          a form provided by the department and shall state:

16               (i) The reason and statutory grounds for the suspension;

17               (ii) The effective date of the suspension;

18               (iii) The suspension periods to which the person may be subject as  
 19               provided in subsection (4) (a) of this section;

20               (iv) The procedures for obtaining restricted noncommercial vehi-  
 21               cle driving privileges;

22               (v) The rights of the person to request an administrative hear-  
 23               ing on the suspension and that if an administrative hearing is not  
 24               requested within seven (7) days of service of the notice of suspen-  
 25               sion the right to contest the suspension shall be waived;

26               (vi) The procedures for obtaining an administrative hearing on  
 27               the suspension;

28               (vii) The right to judicial review of the hearing officer's deci-  
 29               sion on the suspension and the procedures for seeking such review.

30          (c) Notwithstanding the provisions of subsection (4) (a) (i) and (ii)  
 31          of this section, a person who is enrolled in and is a participant in  
 32          good standing in a drug court or mental health court approved by the  
 33          supreme court drug court and mental health court coordinating commit-  
 34          tee under the provisions of chapter 56, title 19, Idaho Code, or other  
 35          similar problem solving court utilizing community-based sentencing  
 36          alternatives, shall be eligible for restricted noncommercial driving  
 37          privileges for the purpose of getting to and from work, school or an  
 38          alcohol treatment program, which may be granted by the presiding judge  
 39          of the drug court or mental health court or other similar problem solv-  
 40          ing court, provided that the offender has served a period of absolute  
 41          suspension of driving privileges of at least forty-five (45) days, that  
 42          an ignition interlock device is installed on each of the motor vehicles  
 43          owned or operated, or both, by the offender and that the offender has  
 44          shown proof of financial responsibility as defined and in the amounts  
 45          specified in section 49-117, Idaho Code, provided that the restricted  
 46          noncommercial driving privileges may be continued if the offender  
 47          successfully completes the drug court, mental health court or other  
 48          similar problem solving court, and that the court may revoke such privi-  
 49          leges for failure to comply with the terms of probation or with the terms



1 and conditions of the drug court, mental health court or other similar  
2 problem solving court program.

3 (5) Service of suspension by peace officer or the department. If the  
4 driver submits to evidentiary testing after the information in subsection  
5 (2) of this section has been provided and the results of the test indicate  
6 an alcohol concentration or the presence of drugs or other intoxicating  
7 substances in violation of the provisions of section 18-8004, 18-8004C or  
8 18-8006, Idaho Code:

9 (a) The peace officer shall take possession of the person's driver's  
10 license, shall issue a temporary permit which shall be valid for a pe-  
11 riod not to exceed thirty (30) days from the date of issuance, and,  
12 acting on behalf of the department, will serve the person with a notice  
13 of suspension in the form and containing the information required under  
14 subsection (4) of this section. The department may serve the person  
15 with a notice of suspension if the peace officer failed to issue the no-  
16 tice of suspension or failed to include the date of service as provided  
17 in subsection (4) (b) of this section.

18 (b) Within five (5) business days following service of a notice of sus-  
19 pension the peace officer shall forward to the department a copy of the  
20 completed notice of suspension form upon which the date of service upon  
21 the driver shall be clearly indicated, a copy of any completed tempo-  
22 rary permit form along with any confiscated driver's license, a certi-  
23 fied copy or duplicate original of the results of all tests for alco-  
24 hol concentration, as shown by analysis of breath administered at the  
25 direction of the peace officer, and a sworn statement of the officer,  
26 which may incorporate any arrest or incident reports relevant to the ar-  
27 rest and evidentiary testing setting forth:

28 (i) The identity of the person;

29 (ii) Stating the officer's legal cause to stop the person;

30 (iii) Stating the officer's legal cause to believe that the per-  
31 son had been driving or was in actual physical control of a motor  
32 vehicle while under the influence of alcohol, drugs or other in-  
33 toxicating substances in violation of the provisions of section  
34 18-8004, 18-8004C or 18-8006, Idaho Code;

35 (iv) That the person was advised of the consequences of taking and  
36 failing the evidentiary test as provided in subsection (2) of this  
37 section;

38 (v) That the person was lawfully arrested;

39 (vi) That the person was tested for alcohol concentration, drugs  
40 or other intoxicating substances as provided in this chapter, and  
41 that the results of the test indicated an alcohol concentration or  
42 the presence of drugs or other intoxicating substances in viola-  
43 tion of the provisions of section 18-8004, 18-8004C or 18-8006,  
44 Idaho Code.

45 If an evidentiary test of blood or urine was administered rather than  
46 a breath test, the peace officer or the department shall serve the no-  
47 tice of suspension once the results are received. The sworn statement  
48 required in this subsection shall be made on forms in accordance with  
49 rules adopted by the department.

1 (c) The department may serve the person with a notice of suspension if  
2 the peace officer failed to issue the notice of suspension or failed to  
3 include the date of service as provided in subsection (4)(b) of this  
4 section.

5 (6) Additional tests. After submitting to evidentiary testing at the  
6 request of the peace officer, the person may, when practicable, at his own  
7 expense, have additional tests for alcohol concentration or for the presence  
8 of drugs or other intoxicating substances made by a person of his own choos-  
9 ing. The person's failure or inability to obtain additional tests shall not  
10 preclude admission of the results of evidentiary tests administered at the  
11 direction of the peace officer unless additional testing was denied by the  
12 peace officer.

13 (7) Administrative hearing on suspension. A person who has been served  
14 with a notice of suspension after submitting to an evidentiary test may re-  
15 quest an administrative hearing on the suspension before a hearing officer  
16 designated by the department. The request for hearing shall be in writing  
17 and must be received by the department within seven (7) calendar days of the  
18 date of service upon the person of the notice of suspension, and shall in-  
19 clude what issue or issues shall be raised at the hearing. The date on which  
20 the hearing request was received shall be noted on the face of the request.

21 If a hearing is requested, the hearing shall be held within twenty (20)  
22 days of the date the hearing request was received by the department unless  
23 this period is, for good cause shown, extended by the hearing officer for  
24 one ten (10) day period. Such extension shall not operate as a stay of the  
25 suspension and any temporary permit shall expire thirty (30) days after ser-  
26 vice of the notice of suspension, notwithstanding an extension of the hear-  
27 ing date beyond such thirty (30) day period. Written notice of the date and  
28 time of the hearing shall be sent to the party requesting the hearing at least  
29 seven (7) days prior to the scheduled hearing date. The department may con-  
30 duct all hearings by telephone if each participant in the hearing has an op-  
31 portunity to participate in the entire proceeding while it is taking place.

32 The hearing shall be recorded. The sworn statement of the arresting of-  
33 ficer, and the copy of the notice of suspension and any temporary permit is-  
34 sued by the officer shall be admissible at the hearing without further evi-  
35 dentiary foundation. The results of any tests for alcohol concentration or  
36 the presence of drugs or other intoxicating substances by analysis of blood,  
37 urine or breath administered at the direction of the peace officer and the  
38 records relating to calibration, certification, approval or quality control  
39 pertaining to equipment utilized to perform the tests shall be admissible as  
40 provided in section 18-8004(4), Idaho Code. The arresting officer shall not  
41 be required to participate unless directed to do so by a subpoena issued by  
42 the hearing officer.

43 The burden of proof shall be on the person requesting the hearing. The  
44 hearing officer shall not vacate the suspension unless he finds, by a prepon-  
45 derance of the evidence, that:

46 (a) The peace officer did not have legal cause to stop the person; or

47 (b) The officer did not have legal cause to believe the person had been  
48 driving or was in actual physical control of a vehicle while under the  
49 influence of alcohol, drugs or other intoxicating substances in viola-

1       tion of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho  
2       Code; or

3       (c) The test results did not show an alcohol concentration or the pres-  
4       ence of drugs or other intoxicating substances in violation of section  
5       18-8004, 18-8004C or 18-8006, Idaho Code; or

6       (d) The tests for alcohol concentration, drugs or other intoxicating  
7       substances administered at the direction of the peace officer were not  
8       conducted in accordance with the requirements of section 18-8004(4),  
9       Idaho Code, or the testing equipment was not functioning properly when  
10      the test was administered; or

11      (e) The person was not informed of the consequences of submitting to ev-  
12      identary testing as required in subsection (2) of this section.

13      If the hearing officer finds that the person has not met his burden of proof,  
14      he shall sustain the suspension. The hearing officer shall make findings of  
15      fact and conclusions of law on each issue and shall enter an order vacating  
16      or sustaining the suspension. If the suspension is vacated, the person's  
17      driver's license, unless unavailable by reason of an existing suspension,  
18      revocation, cancellation, disqualification or denial shall be returned to  
19      him. The findings of fact, conclusions of law and order entered by the hear-  
20      ing officer shall be considered a final order pursuant to the provisions of  
21      chapter 52, title 67, Idaho Code, except that motions for reconsideration of  
22      such order shall be allowed and new evidence can be submitted.

23      The facts as found by the hearing officer shall be independent of the de-  
24      termination of the same or similar facts in the adjudication of any criminal  
25      charges arising out of the same occurrence. The disposition of those crim-  
26      inal charges shall not affect the suspension required to be imposed under  
27      the provisions of this section. If a license is suspended under this section  
28      and the person is also convicted on criminal charges arising out of the same  
29      occurrence for a violation of the provisions of section 18-8004, 18-8004C  
30      or 18-8006, Idaho Code, both the suspension under this section and the sus-  
31      pension imposed pursuant to the provisions of section 18-8005 or 18-8006,  
32      Idaho Code, shall be imposed, but the periods of suspension shall run concur-  
33      rently, with the total period of suspension not to exceed the longer of the  
34      applicable suspension periods, unless the court ordering the suspension in  
35      the criminal case orders to the contrary.

36      (8) Judicial review. A party aggrieved by the decision of the hear-  
37      ing officer may seek judicial review of the decision in the manner provided  
38      for judicial review of final agency action provided in chapter 52, title 67,  
39      Idaho Code.

40      (9) Restricted noncommercial vehicle driving privileges. A person  
41      served with a notice of suspension for ninety (90) days pursuant to this  
42      section may apply to the department for restricted noncommercial vehicle  
43      driving privileges, to become effective after the thirty (30) day absolute  
44      suspension has been completed. The request may be made at any time after ser-  
45      vice of the notice of suspension. Restricted noncommercial vehicle driving  
46      privileges will be issued for the person to travel to and from work and for  
47      work purposes not involving operation of a commercial vehicle, to attend an  
48      alternative high school, work on a GED, for postsecondary education, or to  
49      meet the medical needs of the person or his family if the person is eligible  
50      for restricted noncommercial vehicle driving privileges. Any person whose

1 driving privileges are suspended under the provisions of this chapter may be  
 2 granted privileges to drive a noncommercial vehicle but shall not be granted  
 3 privileges to operate a commercial motor vehicle.

4 (10) Rules. The department may adopt rules under the provisions of  
 5 chapter 52, title 67, Idaho Code, deemed necessary to implement the provi-  
 6 sions of this section.

7 SECTION 3. That Section 18-8004C, Idaho Code, be, and the same is hereby  
 8 amended to read as follows:

9 18-8004C. EXCESSIVE ALCOHOL CONCENTRATION -- PENALTIES. Notwith-  
 10 standing any provision of section 18-8005, Idaho Code, to the contrary:

11 (1) Any person who pleads guilty to or is found guilty of a violation of  
 12 the provisions of section 18-8004(1) (a), Idaho Code, for the first time, but  
 13 who has an alcohol concentration of 0.20, as defined in section 18-8004(4),  
 14 Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a  
 15 test requested by a police officer, shall be guilty of a misdemeanor; and:

16 (a) Shall be sentenced to jail for a mandatory minimum period of not  
 17 less than ten (10) days, the first forty-eight (48) hours of which must  
 18 be consecutive, and may be sentenced to not more than one (1) year;

19 (b) May be fined an amount not to exceed two thousand dollars (\$2,000);

20 (c) Shall be advised by the court in writing at the time of sentencing,  
 21 of the penalties that will be imposed for subsequent violations of the  
 22 provisions of this section and violations of the provisions of section  
 23 18-8004, Idaho Code, which advice shall be signed by the defendant, and  
 24 a copy retained by the court and another copy retained by the prosecut-  
 25 ing attorney;

26 (d) Shall surrender his driver's license or permit to the court;

27 (e) Shall have his driving privileges suspended by the court for an  
 28 additional mandatory minimum period of one (1) year after release from  
 29 confinement, during which one (1) year period absolutely no driving  
 30 privileges of any kind may be granted, ~~and.~~

31 (2) Any person who pleads guilty to or is found guilty of a violation of  
 32 the provisions of section 18-8004, Idaho Code, and who has an alcohol concen-  
 33 tration of 0.20, as defined in section 18-8004(4), Idaho Code, or more, as  
 34 shown by an analysis of his blood, breath or urine by a test requested by a po-  
 35 lice officer, and who previously has been found guilty of or has pled guilty  
 36 to one (1) or more violations of the provisions of section 18-8004, Idaho  
 37 Code, in which the person had an alcohol concentration of 0.20 or more, or any  
 38 substantially conforming foreign criminal violation wherein the defendant  
 39 had an alcohol concentration of 0.20 or more, or any combination thereof,  
 40 within five (5) years, notwithstanding the form of judgment or withheld  
 41 judgment shall be guilty of a felony; and:

42 (a) Shall be sentenced to the custody of the state board of correction  
 43 for a term not to exceed five (5) years; provided that notwithstanding  
 44 the provisions of section 19-2601, Idaho Code, should the court impose  
 45 any sentence other than incarceration in the state penitentiary, the  
 46 defendant shall be sentenced to the county jail for a mandatory mini-  
 47 mum period of not less than thirty (30) days; and further provided that  
 48 notwithstanding the provisions of section 18-111, Idaho Code, a convic-  
 49 tion under this section shall be deemed a felony;

1 (b) May be fined an amount not to exceed five thousand dollars (\$5,000);

2 (c) Shall surrender his driver's license or permit to the court;

3 (d) Shall have his driving privileges suspended by the court for a  
4 mandatory minimum period of one (1) year after release from imprison-  
5 ment, and may have his driving privileges suspended by the court for a  
6 period not to exceed five (5) years after release from imprisonment,  
7 during which time he shall have absolutely no driving privileges of any  
8 kind; and

9 (e) Shall, while operating a motor vehicle, be required to drive only  
10 a motor vehicle equipped with a functioning ignition interlock system,  
11 as provided in section 18-8008, Idaho Code, following the mandatory li-  
12 cense suspension period.

13 (3) Notwithstanding the provisions of subsections (1) (e) and (2) (d) of  
14 this section, a person who is enrolled in and is a participant in good stand-  
15 ing in a drug court or mental health court approved by the supreme court drug  
16 court and mental health court coordinating committee under the provisions of  
17 chapter 56, title 19, Idaho Code, or other similar problem solving court uti-  
18 lizing community-based sentencing alternatives, shall be eligible for re-  
19 stricted noncommercial driving privileges for the purpose of getting to and  
20 from work, school or an alcohol treatment program, which may be granted by  
21 the presiding judge of the drug court or mental health court or other simi-  
22 lar problem solving court, provided that the offender has served a period of  
23 absolute suspension of driving privileges of at least forty-five (45) days,  
24 that an ignition interlock device is installed on each of the motor vehicles  
25 owned or operated, or both, by the offender, and that the offender has shown  
26 proof of financial responsibility as defined and in the amounts specified  
27 in section 49-117, Idaho Code, provided that the restricted noncommercial  
28 driving privileges may be continued if the offender successfully completes  
29 the drug court, mental health court or other similar problem solving court,  
30 and that the court may revoke such privileges for failure to comply with the  
31 terms of probation or with the terms and conditions of the drug court, mental  
32 health court or other similar problem solving court program.

33 (4) All the provisions of section 18-8005, Idaho Code, not in conflict  
34 with or otherwise provided for in this section, shall apply to this section.

35 (5) Notwithstanding any other provision of law, any evidence of convic-  
36 tion under this section shall be admissible in any civil action for damages  
37 resulting from the occurrence. A conviction for the purposes of this section  
38 means that the person has pled guilty or has been found guilty, notwithstand-  
39 ing the form of the judgment or withheld judgment.

40 SECTION 4. That Section 18-8005, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42 18-8005. PENALTIES. (1) Any person who pleads guilty to or is found  
43 guilty of a violation of the provisions of section 18-8004(1)(a), Idaho  
44 Code, for the first time is guilty of a misdemeanor; and, except as provided  
45 in section 18-8004C, Idaho Code:

46 (a) May be sentenced to jail for a term not to exceed six (6) months;

47 (b) May be fined an amount not to exceed one thousand dollars (\$1,000);

48 (c) Shall be advised by the court in writing at the time of sentencing  
49 of the penalties that will be imposed for subsequent violations of the

1 provisions of section 18-8004, Idaho Code, which advice shall be signed  
2 by the defendant, and a copy retained by the court and another copy re-  
3 tained by the prosecuting attorney; and

4 (d) Shall have his driving privileges suspended by the court for a  
5 period of thirty (30) days which shall not be reduced and during which  
6 thirty (30) day period absolutely no driving privileges of any kind may  
7 be granted. After the thirty (30) day period of absolute suspension of  
8 driving privileges has passed, the defendant shall have driving privi-  
9 leges suspended by the court for an additional period of at least sixty  
10 (60) days, not to exceed one hundred fifty (150) days during which the  
11 defendant may request restricted driving privileges which the court  
12 may allow, if the defendant shows by a preponderance of the evidence  
13 that driving privileges are necessary for his employment or for family  
14 health needs.

15 (2) Any person who pleads guilty to or is found guilty of a violation of  
16 the provisions of section 18-8004(1) (b), Idaho Code, for the first time is  
17 guilty of a misdemeanor and subject to:

18 (a) The provisions of section 18-8005(1) (a), (b) and (c), Idaho Code;  
19 and

20 (b) The provisions of section 49-335, Idaho Code.

21 (3) Any person who pleads guilty to or is found guilty of a violation of  
22 the provisions of section 18-8004(1) (c), Idaho Code, for the first time, is  
23 guilty of a misdemeanor and is subject to:

24 (a) The provisions of section 18-8005(1) (a), (b) and (c), Idaho Code;  
25 and

26 (b) The provisions of section 49-335, Idaho Code.

27 (4) Any person who pleads guilty to or is found guilty of a violation of  
28 the provisions of section 18-8004(1) (a), (b) or (c), Idaho Code, who previ-  
29 ously has been found guilty of or has pled guilty to a violation of the provi-  
30 sions of section 18-8004(1) (a), (b) or (c), Idaho Code, or any substantially  
31 conforming foreign criminal violation within ten (10) years, notwithstand-  
32 ing the form of the judgment(s) or withheld judgment(s), and except as pro-  
33 vided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, ex-  
34 cept as provided in section 18-8004C, Idaho Code:

35 (a) Shall be sentenced to jail for a mandatory minimum period of not  
36 less than ten (10) days the first forty-eight (48) hours of which must  
37 be consecutive, and five (5) days of which must be served in jail, as re-  
38 quired by 23 U.S.C. section 164, and may be sentenced to not more than  
39 one (1) year, provided however, that in the discretion of the sentencing  
40 judge, the judge may authorize the defendant to be assigned to a work de-  
41 tail program within the custody of the county sheriff during the period  
42 of incarceration;

43 (b) May be fined an amount not to exceed two thousand dollars (\$2,000);

44 (c) Shall be advised by the court in writing at the time of sentencing,  
45 of the penalties that will be imposed for subsequent violations of the  
46 provisions of section 18-8004, Idaho Code, which advice shall be signed  
47 by the defendant, and a copy retained by the court and another copy re-  
48 tained by the prosecuting attorney;

49 (d) Shall surrender his driver's license or permit to the court;

1 (e) Shall have his driving privileges suspended by the court for an  
2 additional mandatory minimum period of one (1) year after release from  
3 confinement, during which one (1) year period absolutely no driving  
4 privileges of any kind may be granted; and

5 (f) Shall, while operating a motor vehicle, be required to drive only  
6 a motor vehicle equipped with a functioning ignition interlock system,  
7 as provided in section 18-8008, Idaho Code, following the one (1) year  
8 mandatory license suspension period.

9 (5) If the person has pled guilty or was found guilty for the sec-  
10 ond time within ten (10) years of a violation of the provisions of section  
11 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335,  
12 Idaho Code, shall apply.

13 (6) Except as provided in section 18-8004C, Idaho Code, any person who  
14 pleads guilty to or is found guilty of a violation of the provisions of sec-  
15 tion 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found  
16 guilty of or has pled guilty to two (2) or more violations of the provisions  
17 of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially con-  
18 forming foreign criminal violation, or any combination thereof, within ten  
19 (10) years, notwithstanding the form of the judgment(s) or withheld judg-  
20 ment(s), shall be guilty of a felony; and

21 (a) Shall be sentenced to the custody of the state board of correction  
22 for not to exceed ten (10) years; provided that notwithstanding the pro-  
23 visions of section 19-2601, Idaho Code, should the court impose any sen-  
24 tence other than incarceration in the state penitentiary, the defen-  
25 dant shall be sentenced to the county jail for a mandatory minimum pe-  
26 riod of not less than thirty (30) days, the first forty-eight (48) hours  
27 of which must be consecutive, and ten (10) days of which must be served  
28 in jail, as required by 23 U.S.C. section 164; and further provided that  
29 notwithstanding the provisions of section 18-111, Idaho Code, a convic-  
30 tion under this section shall be deemed a felony;

31 (b) May be fined an amount not to exceed five thousand dollars (\$5,000);

32 (c) Shall surrender his driver's license or permit to the court;

33 (d) Shall have his driving privileges suspended by the court for a  
34 mandatory minimum period of one (1) year after release from imprison-  
35 ment, and may have his driving privileges suspended by the court for not  
36 to exceed five (5) years after release from imprisonment, during which  
37 time he shall have absolutely no driving privileges of any kind; and

38 (e) Shall, while operating a motor vehicle, be required to drive only  
39 a motor vehicle equipped with a functioning ignition interlock system,  
40 as provided in section 18-8008, Idaho Code, following the mandatory one  
41 (1) year license suspension period.

42 (7) Notwithstanding the provisions of subsections (4)(e) and (6)(d)  
43 of this section, any person who is enrolled in and is a participant in good  
44 standing in a drug court or mental health court approved by the supreme  
45 court drug court and mental health court coordinating committee under the  
46 provisions of chapter 56, title 19, Idaho Code, or other similar problem  
47 solving court utilizing community-based sentencing alternatives, shall be  
48 eligible for restricted noncommercial driving privileges for the purpose  
49 of getting to and from work, school or an alcohol treatment program, which  
50 may be granted by the presiding judge of the drug court or mental health

1 court or other similar problem solving court, provided that the offender  
2 has served a period of absolute suspension of driving privileges of at least  
3 forty-five (45) days, that an ignition interlock device is installed on each  
4 of the motor vehicles owned or operated, or both, by the offender and that  
5 the offender has shown proof of financial responsibility as defined and in  
6 the amounts specified in section 49-117, Idaho Code, provided that the re-  
7 stricted noncommercial driving privileges may be continued if the offender  
8 successfully completes the drug court, mental health court or other similar  
9 problem solving court, and that the court may revoke such privileges for  
10 failure to comply with the terms of probation or with the terms and condi-  
11 tions of the drug court, mental health court or other similar problem solving  
12 court program.

13 (8) For the purpose of computation of the enhancement period in subsec-  
14 tions (4), (6) and (9) of this section, the time that elapses between the date  
15 of commission of the offense and the date the defendant pleads guilty or is  
16 found guilty for the pending offense shall be excluded. If the determination  
17 of guilt against the defendant is reversed upon appeal, the time that elapsed  
18 between the date of the commission of the offense and the date the defendant  
19 pleads guilty or is found guilty following the appeal shall also be excluded.

20 (9) Notwithstanding the provisions of subsections (4) and (6) of this  
21 section, any person who has pled guilty or has been found guilty of a felony  
22 violation of the provisions of section 18-8004, Idaho Code, a felony viola-  
23 tion of the provisions of section 18-8004C, Idaho Code, a violation of the  
24 provisions of section 18-8006, Idaho Code, a violation of the provisions of  
25 section 18-4006 3.(b), Idaho Code, notwithstanding the form of the judg-  
26 ment(s) or withheld judgment(s) or any substantially conforming foreign  
27 criminal felony violation, notwithstanding the form of the judgment(s) or  
28 withheld judgment(s), and within fifteen (15) years pleads guilty or is  
29 found guilty of a further violation of the provisions of section 18-8004,  
30 Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to  
31 subsection (6) of this section.

32 (10) For the purpose of subsections (4), (6) and (9) of this section and  
33 the provisions of section 18-8004C, Idaho Code, a substantially conforming  
34 foreign criminal violation exists when a person has pled guilty to or has  
35 been found guilty of a violation of any federal law or law of another state,  
36 or any valid county, city, or town ordinance of another state substantially  
37 conforming to the provisions of section 18-8004, Idaho Code. The determina-  
38 tion of whether a foreign criminal violation is substantially conforming is  
39 a question of law to be determined by the court.

40 (11) Any person who pleads guilty to or is found guilty of a violation of  
41 the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall  
42 undergo, at his own expense, (or at county expense through the procedures  
43 set forth in chapters 34 and 35, title 31, Idaho Code,) and prior to the  
44 sentencing date, an alcohol evaluation by an alcohol evaluation facility  
45 approved by the Idaho department of health and welfare; provided however, if  
46 the defendant has no prior or pending charges with respect to the provisions  
47 of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the  
48 records and information required under subsections (12) (a), (b) and (c) of  
49 this section or possesses information from other reliable sources relating  
50 to the defendant's use or nonuse of alcohol or drugs which does not give



1 the court any reason to believe that the defendant regularly abuses alco-  
2 hol or drugs and is in need of treatment, the court may, in its discretion,  
3 waive the evaluation with respect to sentencing for a violation of section  
4 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant.  
5 The court may also, in its discretion, waive the requirement of an alcohol  
6 evaluation with respect to a defendant's violation of the provisions of  
7 section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence  
8 the defendant if the court has a presentence investigation report, sub-  
9 stance abuse assessment, criminogenic risk assessment, or other assessment  
10 which evaluates the defendant's degree of alcohol abuse and need for alco-  
11 hol treatment conducted within twelve (12) months preceding the date of the  
12 defendant's sentencing. In the event an alcohol evaluation indicates the  
13 need for alcohol treatment, the evaluation shall contain a recommendation  
14 by the evaluator as to the most appropriate treatment program, together with  
15 the estimated cost thereof, and recommendations for other suitable alter-  
16 native treatment programs, together with the estimated costs thereof. The  
17 person shall request that a copy of the completed evaluation be forwarded  
18 to the court. The court shall take the evaluation into consideration in  
19 determining an appropriate sentence. If a copy of the completed evaluation  
20 has not been provided to the court, the court may proceed to sentence the  
21 defendant; however, in such event, it shall be presumed that alcohol treat-  
22 ment is required unless the defendant makes a showing by a preponderance of  
23 evidence that treatment is not required. If the defendant has not made a good  
24 faith effort to provide the completed copy of the evaluation to the court,  
25 the court may consider the failure of the defendant to provide the report  
26 as an aggravating circumstance in determining an appropriate sentence. If  
27 treatment is ordered, in no event shall the person or facility doing the  
28 evaluation be the person or facility that provides the treatment unless this  
29 requirement is waived by the sentencing court, with the exception of fed-  
30 erally recognized Indian tribes or federal military installations, where  
31 diagnosis and treatment are appropriate and available. Nothing herein con-  
32 tained shall preclude the use of funds authorized pursuant to the provisions  
33 of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for  
34 indigent defendants.

35 (12) At the time of sentencing, the court shall be provided with the fol-  
36 lowing information:

37 (a) The results, if administered, of any evidentiary test for alcohol  
38 and/or drugs;

39 (b) A computer or teletype or other acceptable copy of the person's  
40 driving record;

41 (c) Information as to whether the defendant has pled guilty to or  
42 been found guilty of violation of the provisions of section 18-8004,  
43 18-8004C or 18-8006, Idaho Code, or a similar offense within the past  
44 five (5) years, notwithstanding the form of the judgment(s) or withheld  
45 judgment(s); and

46 (d) The alcohol evaluation required in subsection (11) of this section,  
47 if any.

48 (13) A minor may be prosecuted for a violation of the provisions of sec-  
49 tion 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code.  
50 In addition to any other penalty, if a minor pleads guilty to or is found

1 guilty of a violation of the provisions of section 18-8004(1)(a), (b) or  
2 (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended  
3 or denied for an additional one (1) year following the end of any period of  
4 suspension or revocation existing at the time of the violation, or until  
5 he reaches the age of twenty-one (21) years, whichever period is greater.  
6 During the period of additional suspension or denial, absolutely no driving  
7 privileges shall be allowed.

8 (14) In the event that the alcohol evaluation required in subsection  
9 (11) of this section recommends alcohol treatment, the court shall order  
10 the person to complete a treatment program in addition to any other sentence  
11 which may be imposed, unless the court determines that alcohol treatment  
12 would be inappropriate or undesirable, in which event, the court shall enter  
13 findings articulating the reasons for such determination on the record. The  
14 court shall order the defendant to complete the preferred treatment program  
15 set forth in the evaluation, or a comparable alternative, unless it appears  
16 that the defendant cannot reasonably obtain adequate financial resources  
17 for such treatment. In that event, the court may order the defendant to com-  
18 plete a less costly alternative set forth in the evaluation, or a comparable  
19 program. Such treatment shall, to the greatest extent possible, be at the  
20 expense of the defendant. In the event that funding is provided for or on  
21 behalf of the defendant by an entity of state government, restitution shall  
22 be ordered to such governmental entity in accordance with the restitution  
23 procedure for crime victims, as specified under chapter 53, title 19, Idaho  
24 Code. Nothing contained herein shall be construed as requiring a court to  
25 order that a governmental entity shall provide alcohol treatment at govern-  
26 ment expense unless otherwise required by law.

27 (15) Any person who is disqualified, or whose driving privileges have  
28 been suspended, revoked or canceled under the provisions of this chapter,  
29 shall not be granted restricted driving privileges to operate a commercial  
30 motor vehicle.

31 SECTION 5. This act shall be in full force and effect on and after Jan-  
32 uary 1, 2012.